IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 540 of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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GUJ POLLUTION CONTROL BOARD - Applicant(s)

Versus

GUJ METAL INDUSTRIES &4 - Respondent(s)

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Appearance :

NOTICE SERVED for Petitioner No(s).: 1.
MR BR GUPTA for Petitioner No(s).: 1.
MR HARESH J TRIVEDI for Petitioner No(s).: 1.
MR SV RAJU for Respondent No(s).: 1,2,3,4.
Mr. LR Pujari, Addl. PUBLIC PROSECUTOR for Respondent No(s).: 5.

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CORAM :HON'BLE MR.JUSTICE C.K.BUCH

Date : 07/07/2005

ORAL JUDGMENT

This Revision Application is filed by the Gujarat Pollution Control Board, Gandhinagar (GPCB for short) against the order of discharge dated 21.09.1993 in Criminal Case No. 546/1991 recorded by the ld. Chief Metropolitan Magistrate, Ahmedabad. The allegation against the accused by the GPCB is that the accused Nos. 1 to 4 have committed the offences punishable under sections 24, 25 and 26 which are punishable under sections 43 and 44 read with section 47 of the Water (Prevention and Control of Pollution) Act, 1974 (hereinafter referred to as the Water Act).

The impugned order of discharged is assailed on various grounds. It is submitted by ld. Counsel Mr. Trivedi for the petitioner GPCB that the accused persons have been wrongly discharged by the ld. Chief Metropolitan Magistrate on technical grounds. Ld. Counsel Mr. Trivedi has concentrated his arguments mainly on two grounds viz (i) that the trial Court has grossly erred in holding that there is breach of provisions of sections 21(3) and (5) of the Water Act and (ii) Report of Public Analyst ought not to have been held as inadmissible in evidence. It is also argued that the observations made in para-9 of the impugned order are also contrary to the intention of the legislature and particular part of the scheme can not be said to be mandatory and the same can be said to be directory. He has, therefore, argued that the impugned order is bad-in-law and, therefore, requires to be quashed.

It emerges from the observations made in para-5 of the impugned order that sample was not collected strictly in accordance with the scheme of section 21 of the Act and the sample was not properly divided as per the provisions of law. Further, the stand taken by ld. Counsel Mr. Trivedi for GPCB has been replied earlier by this Court in the case of **Dahyabhai Kalubhai Solanki v/s Divine Intermediates &Chemicals and Ors., 1996(2) GLH 138,** wherein this Court has observed that as per conjoint reading of S.21(3(b) and S.21(5), the sample to be divided in two parts

only when it is so expressed by the occupier or agent present at the time of taking of sample. The facts in the present case clearly reveal that this part of scheme of section 21 of the Water Act was not complied with by the officer who had drawn the sample of water. I would like to quote relevant para-10 of the judgment, wherein the Court has said thus: “10.Mr.Gupta submitted that there is no maximum limit prescribing as to how many liters of the material should be collected, and as such the P.W.2 was justified in collecting 5 litres. Rule 27(1)(b) of the Rules requires that at least 2.5 litres of the material required to be analysed shall be sent in a container, the capacity of which shall not be less than 3 litres and not be more than 5 litres. In my view, the capacity of the container is prescribed, minimum tobe of 3 litres and maximum of 5 litres, for the purpose that if there is fragmentation or any other transformation in the collected sample, it may be preserved or maintained properly or may not overflow. However, in the present case, there is no material to show as to what was the capacity of the container. In the facts of the case, P.W.2 has failed to comply with the procedure laid down in Rule 27 of the said Rules. As per section 21(5) of the said Act, the sample is to be sent forthwith to the Laboratory referred to in sub-clause (d) of sub-Section (3) of Section 21. In the present case, after taking the sample, the Karba was handed over to Miss P.S.Shah in the office. In the cross-examination, P.W.2 has deposed that he did not know as to what happened to the Karba, after handling it over to Miss. PS Shah in the office. Thus, it appears that the sample was not sent forthwith to the Laboratory for the purpose of analysis.”

The second point urged by ld. Counsel Mr. Trivedi for GPCB has also been answered by this Court in the decision in the case of **M/s Nicosulf Industries &Exports Pvt. Ltd. &Anr. V/s State of Gujarat &Anr.,2002(2) GLR 1580,** wherein this Court has observed that cognizance of the offence can be taken by the Court firstly on the complaint filed by the Board and secondly by the officer authorised by the court to file such complaint. Undisputedly in the present case, the complaint is not filed

by the Board nor by the officer authorised by the Board. The Law Officer who has filed the complaint is not the officer who has been authorised by the Chairman of the Board. In para-10 of the judgment, this Court has said thus:-

“10..... Even if, Sec.49(1)(a) and Sec.11A are read together, it can not be said that the legislature intended that the Chairman of a Board can exercise all powers and perform all duties from time to time without specific delegation made to him by the Board. Section 49(1)(a) is clear enough, from which, it can be said that the complaint can be made firstly by a Board and secondly by any officer authorised in this behalf by the Board. Thus, filing of a complaint under this Section can be made by the Board or by any officer authorised by the Board in this behalf. No specific authorization by the Board has been made under Resolution dated 27.03.1984 to the Chairman for filing a complaint against any person committing offences under the Act. All that he is authorised under this resolution is power to sanction prosecution by the Chairman of the Board. Power to sanction prosecution is altogether different from power and authority to file complaint. Under this resolution, it is nowhere mentioned that the Chairman of the Board himself can file a complaint. If, the Chairman himself does not possess power to file complaint under a specific resolution from the Board, it is difficult to understand how he can delegate such power to another officer of the Board. In the absence of specific power delegated by the Board to the Chairman to file complaint or authorising the Chairman to delegate power to file complaint to some other officer of the Board, no officer can file complaint, and in this view of the matter, the order dated 18.8.1989 Exh.31 can not be said to be valid delegation of power by the Chairman in favour of the Assistant Environmental Engineer of the Board. Even under sec.11A of the Act, the Chairman of the Board shall exercise such powers and perform such duties as may be prescribed or as may from time to time be delegated to him by the Board. Thus, without delegation of powers by the Board, the Chairman cannot exercise power to delegate

the authority to file complaint to some other person. It is not within the general powers of the Chairman of the Board to exercise power of delegation to some other officer of the Board to file complaint."

Mr. Trivedi, ld. Counsel appearing for the GPCB has stated that this very decision has been assailed by the Board before the Apex Court and the same is pending. However, no stay has been granted. He, however, submitted that pending adjudication of the said decision before the Apex Court, it can not be said to be concluded legally the ratio laid down in the said decision. However, the fact remains that the ld. Judge, while dealing with the points raised above, has considered the ratio of this decision and was also supposed to consider the Scheme of the Act and the crucial question raised before the court that delegated authority whether can further delegate such powers or redelegate such powers ? The accused could have been discharged on one point as to non-compliance of the provisions of Sec.21 referred to above and so without entering into the discussion as to the second point and assailment of second decision before the Apex Court, when there was no scope to bring home the charge in view of the violation of the mandatory provisions of the Act, the Court can discharge the accused on that count alone. So, adopting reasons assigned by this Court in above-referred two decisions, I do not find any substance in this Cri. Rev. Application and hence the same is hereby dismissed. Rule discharged. IR granted stands vacated.

(C.K. BUCH, J)

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